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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 ANTHONY CROSS, ) 3:13-cv-00433-MMD-WGC  
9 Plaintiff, ) **ORDER**  
10 vs. )  
11 RON JAEGER, )  
12 Defendant. )  
13 \_\_\_\_\_ )

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15 Before the undersigned are the Minutes of Proceedings, Day 3 of the (second) Jury Trial of this  
16 matter. (ECF No. 553, p. 2.) District Judge Miranda Du has referred the issue of whether the Nevada  
17 Department of Corrections (NDOC) put a “litigation hold” on certain disciplinary documents pertaining  
18 to former NDOC inmate Anthony Medel and whether the Medel documents were in fact provided the  
19 Attorney General’s Office as represented to the court. (ECF No. 363 at 2; ECF No. 364.)

20 By way of background, this issue initially came to the undersigned’s attention when Plaintiff  
21 filed an emergency motion on December 5, 2016, seeking a court order to preserve inmate Medel's file  
22 which was possibly due for routine destruction on December 31, 2016, by NDOC in accordance with  
23 NDOC protocols (per its Administrative Regulations). (ECF No. 356.) Plaintiff’s argument in his  
24 motion for a “litigation hold” was that Medel was provided a copy of Disc Form III and that he (Medel)  
25 was successful on his appeal of the discipline initially handed out to him. Plaintiff - on the other hand -  
26 argues that because Plaintiff was allegedly not given a copy of the form, Plaintiff was *not* allowed to  
27 appeal and his NDOC conviction was left intact. Plaintiff wanted the Medel documents preserved.  
28 (ECF No. 356 at 3.)

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1 The next day after Plaintiff's motion was filed, the court set a hearing date on Plaintiff's motion  
2 for December 21, 2016. (ECF No. 357.)

3 Defendant's counsel filed an "opposition" to Plaintiff's motion. (ECF No. 363.) Counsel argued  
4 the Medel documents were "not relevant to Plaintiff's case" because Medel was "charged for different  
5 reasons." While both inmates were charged with MJ Assault and MJ3 Battery, Medel was supposedly  
6 the "lookout" while Cross perpetrated the alleged assault.

7 Regardless of whether the Medel documents were germane to Cross' claims, the Deputy Attorney  
8 General represented in its filing (ECF No. 363) that the Deputy Attorney General had contacted the  
9 NDOC and requested a "litigation hold" be placed on Medel's file (Medel had then been released from  
10 NDOC custody). The Deputy Attorney General further represented that "in addition to requesting that  
11 a litigation hold be placed on the file, the Attorney General's Office has requested the specific  
12 disciplinary hearing documents and grievance be retrieved from storage and sent to counsel." (ECF No.  
13 363 at 2.)

14 Based on the Deputy Attorney General's representations, the court entered a minute order  
15 determining Plaintiff's motion to be moot and also vacated the December 21, 2016, hearing.  
16 (ECF No. 364.) The court also instructed the Attorney General's Office to notify the ESP of this ruling.

17 The undersigned did not find the Medel file to be irrelevant or inadmissible; instead, the court  
18 stated specifically that the relevancy or admissibility of the documents "reserved for District Judge  
19 Miranda Du with respect to the trial of this matter." (ECF No. 364.)

20 From the Minutes of the Proceedings, Jury Trial Day 2 (ECF No. 550), it appears that  
21 Defendant's counsel offered certain documents pertaining to inmate Medel's disciplinary record (NDOC  
22 disciplinary forms 2 and 3). In response to Defendant's offer, Mr. Cross asked that "additional  
23 documents relating to Anthony Medel's disciplinary records and the appeal be admitted into the record."  
24 Deputy Attorney General Johnson responded but the minutes do not reflect the substance of that  
25 response. The two documents were nevertheless admitted into evidence. (ECF No. 550 at 2.)

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1 After the jury reached its verdict, the following day, District Judge Du discussed with Deputy  
2 Attorney Johnson the preservation order entered by the undersigned:

3 Mr. Johnson responds to the Court's inquires as to whether the State  
4 obtained Anthony Medel's records as ordered by Magistrate Judge Cobb  
5 (ECF No. 364.) The Court will refer the issue to Magistrate Judge Cobb  
6 to determine whether he wants to make inquiry on this issue. Mr. Johnson  
7 advises that Defendant's exhibit 511 is the electronic record on Anthony  
8 Medel and that his office did not receive the paper records. The Court  
9 will defer to Magistrate Judge Cobb to see if he would want to address  
10 this issue.

11 (ECF No. 553 at 2.)

12 The undersigned now seeks clarification of the representations made by counsel that a litigation  
13 hold had been requested by the Attorney General's Office, whether Medel's NDOC disciplinary records  
14 were in fact the subject of a "litigation hold" and whether the NDOC had provided the Medel  
15 disciplinary records as the Attorney General's Office had requested. (ECF No. 363 at 2.)

16 **IT IS HEREBY ORDERED** that within **fourteen (14) days** of the date of this order  
17 Defendant's counsel shall submit a memorandum of points and authorities/declaration of counsel  
18 clarifying to what extent the Attorney General's representations were fulfilled. Plaintiff may file a  
19 response within **ten (10) days** thereafter.

20 DATED: February 5, 2018.

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22 WILLIAM G. COBB  
23 UNITED STATES MAGISTRATE JUDGE  
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